

PERSONNEL BOARD
STATE OF WISCONSIN
MADISON

STATE OF WISCONSIN AM 10 26 CIRCUIT COURT DANE COUNTY

WILBUR J. SCHMIDT,
Secretary, Department
of Health and Social Services,

Petitioner,

Case No. 145-315

vs.

MEMORANDUM DECISION

STATE OF WISCONSIN
PERSONNEL BOARD,
(Dawn Janke),

Respondent.

BEFORE: HON. GEORGE R. CURRIE, Reserve Circuit Judge

This is a proceeding brought by petitioner pursuant to sec. 227.15, Stats., to review an order of respondent board dated December 20, 1974.

STATEMENT OF FACTS

Dawn Janke was an employee with permanent status in class of the State Department of Health & Social Services at the Winnebago Mental Health Institute. By letter dated June 6, 1974, Dr. Treffert, Director of the Winnebago Mental Health Institute, notified Ms. Janke that she was to be laid off effective June 22, 1974. The layoff was necessary because of a reduction in the work force. Ms. Janke filed a timely appeal to the State Personnel Board, and on July 17, 1974, a pre-hearing conference was held before Janes L. Greenwald, Legal Counsel for the Personnel Board. At the pre-hearing conference it was determined that the parties would brief only the following question at that time: Which party must bear the burden of proof in a layoff hearing before the personnel board?

On November 25, 1974, the respondent board filed its opinion and order (R. 25) in which it concluded that the burden of proof in a layoff case is on the employer rather than the employee. This holding was directly contrary to what had been decided in the memorandum opinion rendered by Hon. Norris Maloney, Circuit Judge, in Weaver v. Personnel Board (Case No. 141-146, Circuit Court for Dane County, July 9, 1974).

Five days prior to the board's order of November 25, 1974, the parties, viz., the Wisconsin Department of Health and Social Services and Dawn Janke, through their respective counsel, entered into a stipulation dated November 20, 1974, which, after the introductory paragraph, reads as follows (R. 23):

"Appellant asserts a claim against the Respondent based on the following:

"1. Appellant was a State Employee with permanent status in class, employed by Respondent, at Winnebago Mental Health Institute, with a Civil Service Title of Social Worker I.

"2. By letter from Dr. Darold A. Treffert, Director of the Winnebago Mental Health Institute, dated June 6, 1974, Dawn Janke was notified she had been laid off, effective June 22, 1974.

"3. Dawn Janke appealed the layoff decision, alleging that the layoff was not for just cause.

" Respondent denies any liability to Appellant, and denies that the layoff herein was not for just cause, and was not determined, and effected according to the Wisconsin Statutes, the Rules of the Director of the Bureau of Personnel, and the Administrative Orders and Decisions of the Department of Health and Social Services.

"The parties desire to reach a full, fair, and final settlement of all matters arising out of the layoff, as hereinabove described, this agreement is made to effectuate that end.

"This agreement consenting, and stipulating to the entry of the Order, hereinafter set forth, is executed by the parties hereto for the sole purpose of settling (settling?) the claims involved in this dispute, and it is expressly understood, and agreed as a condition hereof, that this agreement shall not constitute, or be construed to be an admission on any part of the Respondent, or as evidencing, or indicating in any degree an admission that the layoff was not for just cause, or was not determined, and effected according to the Wisconsin Statutes, the Rules of the Director of Bureau of Personnel, or the Administrative Orders and Decisions of the Department of Health and Social Services.

"The parties hereby agree, and consent to the entry of the following Order:

"On the agreement of the parties hereinabove set forth, and on the pleading and proceedings heretofore served, filed, or had in this proceeding;

"IT IS HEREWITH ORDERED, That the Respondent herein reinstate Dawn Janke to the position she would have been in had it not been for the layoff which occurred, effective June 22, 1974, without any loss of seniority or other benefits, and with

back pay; less all Unemployment Compensation and earnings from any other employment, from said date until her individual receipt of Respondent's written unconditional offer of recall to active employment."

Respondent board's order of December 20, 1974 (R. 36), after reciting pertinent parts of the stipulation, proceeded to order the reinstatement of Ms. Janke in the identical language of the order set forth in the stipulation.

THE ISSUES

The brief of the respondent states the issue to be decided is whether the instant review proceeding should be dismissed since the order sought to be reviewed was entered pursuant to stipulation. Respondent contends that petitioner is not an aggrieved party because of the order having been so entered pursuant to stipulation.

Petitioner does not contend that there is anything specifically decided in the order of December 20, 1974, which it wishes reversed. Rather, its position is that this order is a final order which permits the Court to review the board's opinion and order of November 25, 1974 (R. 25) as an intermediate decision or order. What petitioner desires this Court to do is to reverse the holding that the burden of proof in this layoff case was on the employer department.

The Court's Decision

If the order of December 20, 1974, were not entered upon stipulation, the Court would hold that the board's opinion and order of November 25, 1974, was an intermediate procedural ruling which would be reviewable by this Court under its review of the final order of December 20, 1974. Pasch v. Department of Revenue (1973), 58 Wis. 346, 353-357, holds that it was the legislative intent to limit judicial review under sec. 227.15, Stats., to final orders of an administrative agency, and any intermediate procedural order or decision be reviewed by review taken from the final order in the proceeding. See also State v. WERC (1974), 65 Wis. 2d 624, 631.

However, the order of December 20, 1974, was entered pursuant to a stipulation which stated (R. 23): "The parties desire to reach a full, fair, and final settlement of all matters arising out of the layoff" (emphasis supplied). It is the opinion of the Court that this language superseded any denials of liability on the part of the employer department contained in the stipulation, and that such denials do not afford a peg upon which to ground a review of the respondent board's intermediate procedural ruling of November 25, 1974.

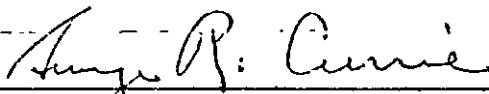
In civil actions the courts have long held that where orders are made on stipulation, there is no right of appeal since no one is aggrieved. Buchberger v. Mosser (1940), 236 Wis. 70, 77. See Annotation, Consent Judgment--Appellate Review, 69 ALR 2d 755, 767.

Clearly petitioner is not an aggrieved party within the meaning of sec. 227.16, Stats., with respect to the order of December 20, 1974, which the stipulation had agreed was to be a "full . . . and final settlement of all matters arising out of the layoff" of Ms. Janke. Therefore, the instant review proceeding should be dismissed because prosecuted by one who is not an aggrieved party.

Let judgment be entered dismissing the proceeding.

Dated this 27th day of May, 1975.

By the Court:



Reserve Circuit Judge